Supreme Court, U.S.
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No. 95-1825

In The

Supreme Court of the United States

October Term, 1995

ROBERT J. LAFFOND,

Petitioner,

vs.

COMMONWEALTH OF MASSACHUSETTS,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Judicial Court of Massachusetts

RESPONDENT'S BRIEF IN OPPOSITION

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28 pp

QUESTIONS PRESENTED

1. Whether the Massachusetts Appeals Court properly followed precedent in holding that the Town of Dalton's Board of Health Regulation was constitutional and did not violate the Commerce Clause, because the Regulation was reasonably related to the legitimate local interest of public health, nondiscriminatory against out-of-state commerce, not an undue restraint upon interstate commerce, and not preempted by federal law.

2. Whether the validity, under Massachusetts law, of a Town Board of Health Regulation raises an important question of federal law.

LIST OF INTERESTED PARTIES

The Petitioner is Robert J. Laffond, who is a truck driver for Berkshire Cleanway Rubbish Removal, Inc. ("BCI").

The Respondent is correctly identified as the Commonwealth of Massachusetts as this case arises out of a complaint filed by the Commonwealth for a violation of a Board of Health Regulation of the Town of Dalton, Massachusetts (the "Town"). Because this matter involves a challenge to the Town's Regulation, Dalton's Town Counsel, Joel B. Bard of Kopelman and Paige, P.C. has represented the Commonwealth throughout these proceedings.

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STATUTORY PROVISIONS INVOLVED

In addition to the constitutional provisions, statutes and municipal by-laws referenced by Petitioner, the Respondent relies on the following provisions of the Massachusetts General Laws, which have been included in the Appendix hereto:

Mass. Gen. L. ch. 111, § 31

Mass. Gen. L. ch. 111, § 31A

Mass. Gen. L. ch. 111, § 31B

STATEMENT OF THE CASE

A. Procedural History

On September 24, 1993, the Town of Dalton Police Chief filed an application for a Complaint in Pittsfield District Court to issue against Petitioner Laffond for two violations of a Town of Dalton Board of Health Regulation (the "Regulation"). At the October 28, 1993, District Court hearing on the Police Chief's application for a Complaint, Petitioner filed a Motion to Dismiss the Complaint, challenging the Regulation's constitutionality.

On March 17, 1994, at a pre-trial conference, the District Court (Barbalunga, J.) ordered that the parties prepare an Agreed Statement of Facts and requested that the parties file memoranda on Petitioner's motion to dismiss. At a hearing on June 2, 1994, the District Court denied Petitioner's motion to dismiss and found Petitioner guilty of violating the Regulation. Petitioner was fined $200, payment of which was stayed. Petitioner filed a notice of appeal with the Massachusetts Appeals Court on June 6, 1994.

On September 29, 1995, the Appeals Court issued a written decision in which it affirmed the District Court's judgment. The Appeals Court found that the Town's Regulation did not violate the Commerce Clause of the United States Constitution, art. I, § 8, cl. 3, because any inconveniences and burdens were not disproportionate when balanced against the Town's interest, namely the preservation of tranquility during hours when residents are likely to be at rest in their homes. The Appeals Court further held that the Town's regulation was not irrational.

Petitioner filed a Petition for Rehearing with the Appeals Court which the Appeals Court denied on October 26, 1995. On November 27, 1995, the Massachusetts Supreme Judicial Court denied Petitioner's Application for Further Appellate Review.

B. The Record Below

In his zeal to build a case for review by this Court, Petitioner has added facts not on the record and a claim not raised below. The additional facts concern extraneous details of BCI's (Petitioner's employer) waste-hauling operations. The additional claim is one for violation of Petitioner's due process rights. Petitioner attempts to introduce numerous facts that are not in the record. The Petition's "Background" section on pages 5 and 6, except for the last full paragraph on page 6, is not supported by any documents or evidence in this case. Petitioner has also added unfounded statements regarding Town officials' hostility to BCI. None of these "facts" (which are, in any event, irrelevant) should be considered by this Court.

In addition, as he unsuccessfully attempted to do in his Application for Further Appellate Review to the Massachusetts Supreme Judicial Court, Petitioner attempts to raise an issue which cannot be reached by this Court because it was not raised below. Petitioner now claims, at 18, that his due process rights

were violated because he was not given notice "of the charges against him so he can prepare a defense." Petitioner appears to be attempting to argue, at 16-17, that the form of the complaint did not put him on notice that the charge against him was that he was violating the Town's regulation. The record clearly shows that Petitioner knew what the issues were and that he was able to prepare a defense.

Petitioner's knowledge of the violation and the issues it raised is first evidenced by the Motion to Dismiss that he filed in Pittsfield District Court. Petitioner moved to dismiss the Town's complaint on the grounds that the Dalton Board of Health Regulation was unconstitutional, violated the Commerce Clause and was preempted by state law, among other reasons. It is clear from his Motion that Petitioner understood the violation with which he had been charged and the issues that he needed to address in his defense.

The Agreed Statement of Facts, developed jointly by Petitioner and the Town in order to present the issues to the trial court, also demonstrates Petitioner's awareness of the violation. Paragraph 1 of the Agreed Statement clearly states that "[t]his matter concerns a Board of Health Regulation entitled Transportation of Garbage on Public Ways . . . adopted pursuant to the provisions of M.G.L. c. 111, § 31B." The police report dated September 23, 1993, incorporated into the Agreed Statement of Facts by paragraph 8, explicitly states that Petitioner was "in violation of the regulation . . . which stated that such vehicles were only allowed in residential areas between 7:00 A.M and 7:00 P.M." (This police report has been omitted from both Petitioner's Petition and Appendix but has been reproduced in Respondent's Appendix).

Lastly, Petitioner's Brief to the Massachusetts Appeals Court further shows that Petitioner understood the issues raised

by the Town's complaint. In that Brief, Petitioner challenged the authority of the Town to enact the Regulation and claimed that the Regulation violates the Commerce Clause. Accordingly, Petitioner cannot now be allowed to manufacture a federal due process claim that a "wrong complaint" was filed and that he did not have notice of the charges against him.

REASONS FOR DENYING THE WRIT

I.

THE MASSACHUSETTS APPEALS COURT PROPERLY FOLLOWED PRECEDENT AND HELD THAT THE TOWN OF DALTON'S BOARD OF HEALTH REGULATION WAS CONSTITUTIONAL AND DID NOT VIOLATE THE COMMERCE CLAUSE, BECAUSE IT WAS REASONABLY RELATED TO THE LEGITIMATE LOCAL INTEREST OF PUBLIC HEALTH, NON-DISCRIMINATORY AGAINST OUT-OF-STATE COMMERCE, NOT AN UNDUE RESTRAINT UPON INTERSTATE COMMERCE, AND NOT PREEMPTED BY FEDERAL LAW.

The Appeals Court properly held that the Town's Regulation did not violate the Commerce Clause of the United States Constitution, art. I, § 8, cl. 3. The Court noted that the facts in the record did not support Petitioner's claim that the regulation excessively burdens interstate commerce in relation to the asserted benefits. The court properly followed precedent with regard to interpretation of the Commerce Clause and concluded that any burdens and inconveniences were not disproportionate when balanced against the Town's interest in the preservation of tranquility during hours when residents were likely to be resting. *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970); *Nat. Tank Truck Carriers v. City of New York*, 677 F.2d 270, 274 (2nd Cir. 1982).

The Appeals Court, in finding that the Regulation did not violate the Commerce Clause, correctly applied the Supreme Court's test in *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). Under the *Pike* test, where a state statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the local benefits. *Id.* In this case, the exercise of the Town's police power serves a legitimate local interest, namely the health of the residents of the Town. *Philadelphia v. New Jersey,* 437 U.S. 617 (1978); *Huron Portland Cement Co. v. Detroit,* 362 U.S. 440 (1959); *Commonwealth v. B & W Transportation, Inc.*, 388 Mass. 799 (1983). Because it is even-handed in its operation, *i.e.*, nondiscriminatory, and the burden imposed on interstate commerce is not "clearly excessive in relation to the putative local benefits," the Regulation is presumed valid. *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970); *Hughes v. Oklahoma,* 441 U.S. 322 (1979). Finally, the regulated activity is not one which requires uniformity of treatment, and thus it may be regulated on the local level.

The Regulation could have some indirect effect on BCI's activities in that it limits the hours during which BCI trucks may travel on residential streets in Dalton. Petitioner would have the Court conclude from this fact that the Regulation is a violation of Petitioner's interstate commerce rights. This simple equation does not, however, demonstrate a violation of constitutionally protected rights. If these facts create a violation of interstate commerce protection, then any local zoning regulation prohibiting business or commercial uses in certain parts of a municipality could be vulnerable to the same challenge. The case law interpreting the United States Constitution's Commerce Clause does not support Petitioner's argument. The Regulation is neither preempted by, nor in violation of, federal interstate commerce laws.

A. The Regulation is nondiscriminatory and is reasonably related to a legitimate local interest.

The Regulation is even-handed and nondiscriminatory, therefore it is not *per se* invalid. The Regulation does not discriminate between in-state and out-of-state businesses. *Grocery Mfgrs. of America v. Dept. of Pub. Health,* 379 Mass. 70, 80 (1979). Because the Regulation applies to all similarly situated commercial waste transportation vehicles which travel through town, whether based locally or out-of-state and whether involved in purely local or interstate commerce, the Regulation cannot be said to discriminate against interstate commerce in violation of the Commerce Clause. All waste transportation companies, regardless of their location, are similarly affected by this Regulation. They must not use streets in residential areas from 7:00 p.m. to 7:00 a.m. The Town's Regulation does not effectuate economic protectionism. *West Lynn Creamery, Inc. v. Healy,* 114 S. Ct. 2205, 2217 (1994) (unconstitutional to preserve local industry by protecting it against interstate competition). Nor does the Regulation, in its practical operation, work discrimination against interstate commerce. *Philadelphia v. New Jersey,* 437 U.S. 617, 627 (1978) (statute prohibiting any importation of out-of-state waste was discriminatory and *per se* invalid).

The Town of Dalton seeks to protect the public health and well-being by prohibiting all commercial waste traffic in residential areas during those hours when residents are trying to relax at their homes and sleep, *i.e.*, from 7:00 p.m. to 7:00 a.m. As stated by the Board of Health, the Regulation was adopted "in order to limit noise and odor and provide peace of mind within the residential zoning districts of the Town of Dalton." These are legitimate local interests that the Board seeks to advance through its police powers. In order to accomplish these purposes, the Regulation applies to refuse vehicles whether the truck bins are

filled or empty, whether engaged in in-state or out-of-state travel, as they all create significant noise and nuisance.

B. Because the Regulation does not impose an undue restraint upon interstate commerce, it does not violate the Commerce Clause.

Because the Regulation serves a legitimate local interest and furthers this interest by a means with the least restrictive impact on interstate activities, it does not violate the Commerce Clause. *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970) (balancing test applied in cases involving nondiscriminatory regulations that incidentally affect interstate commerce while serving local interests); *Evergreen Waste Systems, Inc. v. Metropolitan Service Dist.*, 820 F.2d 1482 (1987). Members of the public have a significant right to be free of the noise, odor and disruption of waste-hauling traffic on residential streets during their resting and sleeping hours. The Regulation is the least restrictive means that the Town of Dalton Board of Health could use under G.L. c. 111, §§ 31A, 31B to further this interest. The Town has balanced the public rights and interests with the needs of businesses which operate in the Town, regardless of where they are located, and has effected a compromise by means of the Regulation. The Town is not banning refuse vehicles from all of its streets. *Diamond Waste, Inc. v. Monroe County, GA.*, 939 F.2d 941 (11th Cir. 1991) (absolute ban on out-of-county and out-of-state wastes held to be unconstitutional). Nor is the Town singling out out-of-state vehicles; any refuse vehicle may travel on any non-residential street twenty-four hours a day. Nor is the Town permanently excluding vehicles from residential streets; refuse vehicles may use these streets for twelve hours each day.

The Regulation is, no doubt, an inconvenience, and perhaps even an expense, for refuse companies who must make adjustments so as to avoid residential streets for the small

number of their vehicles traveling outside of normal business hours. The Regulation may also delay the movement of some wastes in interstate commerce by limiting the operation of some refuse vehicles which must use residential streets between the hours of 7:00 p.m. to 7:00 a.m.. These inconveniences and burdens, however, are not disproportionate when balanced against the public interest in peace and quiet in residential areas during resting and sleeping hours. The Second Circuit Court of Appeals has held that, even though a city's regulations might burden interstate commerce by making trucks travel more miles to circumvent the city or by slowing the movement of goods in interstate commerce, these "inconveniences" were not unconstitutionally disproportionate under the Commerce Clause when balanced against public interest. *Nat. Tank Truck Carriers v. City of New York*, 677 F.2d 270, 274 (2nd Cir. 1982) (city's restrictions on the hours when trucks carrying hazardous gases could use city streets did not violate the Commerce Clause). Certainly, the minor inconvenience and possible expense created by the Regulation is not enough to invalidate the Regulation.

C. The Regulation is not preempted by federal laws.

The Regulation is not inconsistent with nor repugnant to federal interstate commerce laws, and is, therefore, not preempted by them. The regulation of traffic on local residential streets cannot require federal jurisdiction. There is no question that the regulation of traffic on local streets, like the regulation of local uses through zoning, is well within the jurisdiction of a municipality. This type of activity is, therefore, not one which requires federal regulation.

The requirement of uniformity of treatment usually becomes important when the proposed regulation is so out-of-proportion to the local interest sought to be protected that to

disrupt the flow of commerce for the stated local interest is unreasonable. *Southern Pacific Co. v. Arizona,* 325 U.S. 761 (1945). The interest of public health sought to be advanced by prohibiting travel by refuse vehicles through residential streets during evening and sleeping hours is not unreasonable, nor is the public health interest disproportionate to the effect on the businesses of the limitation of hours. It is not a blanket prohibition against such refuse vehicles travelling through the residential areas, as these vehicles are permitted to travel through the residential areas in question for twelve hours of each day, notably the typical business hours of each day. In the present case, therefore, uniformity is not a requirement which would preclude such a regulation.

As it cannot be shown that the Regulation violates any constitutional protection or federal law, the Petition for a Writ of Certiorari should be denied.

II.

THE VALIDITY, UNDER MASSACHUSETTS LAW, OF A TOWN BOARD OF HEALTH REGULATION DOES NOT RAISE A QUESTION OF FEDERAL LAW.

The Massachusetts Appeals Court decision affirming the validity of the Town's Regulation disposed of the federal and state issues raised by Petitioner in his challenge. The Petition seeks, inappropriately, to have the United States Supreme Court also consider that portion of the judgment made by the state court on substantive state issues.

The Dalton Board of Health had adopted a regulation promulgated under the authority of Massachusetts General Laws Chapter 111, §§ 31, 31A and 31B. These sections empower a board of health to grant permits and authorize the board to enact

rules and regulations for the control of transportation of offensive substances. The Appeals Court's decision affirming the Regulation is in line with the established principle that a local board of health has the authority to make reasonable health regulations that are consistent with state law. *Town of Wendell v. Attorney General,* 394 Mass. 518, 529-530 (1985); *Bloom v. Worcester,* 363 Mass. 136, 145, 149 (1973); *Lomberto v. Franklin,* 27 Mass. App. Ct. 797 (1989).

A municipal ordinance duly enacted under ample grant of power is presumptively constitutional and binding. *Linmark Associates, Inc. v. Willingboro,* 535 F.2d 786 (1976). The municipal regulation in question was enacted pursuant to a presumptively valid Massachusetts statute specifically authorizing such regulations. A local board of health has the authority to make reasonable health regulations, as long as such regulations are consistent with state law. *Town of Wendell v. Attorney General,* 394 Mass. 518, 529-530 (1985). The Town's Regulation does not regulate beyond the requirements of that statute and is not inconsistent with the statute. It should, therefore, be presumed valid.

Clearly, the Regulation is not preempted by state law, because it precisely meets requirements of Mass. Gen. L. ch. 111, § 31B, enacted to regulate this exact type of commercial activity. The Massachusetts Supreme Judicial Court, in interpreting the scope of a municipality's home rule power, has stated that "communities may enact legislation to advance the common good so long as it is not inconsistent with State law." *Lomberto v. Franklin,* 27 Mass. App. Ct. 797 (1989), citing *Bloom v. Worcester,* 363 Mass. 136, 145, 149 (1973). As the Regulation is not inconsistent with nor repugnant to these state laws, it is not preempted by them. The Regulation, therefore, is constitutional and should be upheld.

The Town's regulation of empty refuse truck traffic on residential streets is not inconsistent with Mass. Gen. L. ch. 111, §§ 31A, 31B. In determining whether a regulation is inconsistent, courts have given municipalities "considerable latitude," as stated by the Massachusetts Supreme Judicial Court in *Bloom v. Worcester,* 363 Mass. 136 (1973):

> As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid.

Id. at 154. Such a conflict appears when "either the legislative intent to preclude local action is clear, or, absent plain expression of such intent, the purpose of the statute cannot be achieved" in the face of the local regulation. *Take Five Vending, Ltd. v. Provincetown,* 415 Mass. 741, 744 (1993).

Petitioner, at 13, would have this Court believe that the term "refuse vehicle" is vague, and Petitioner incorrectly states that "[e]very pick-up truck or other truck that transports material to the Town Transfer Station would thereafter qualify as 'empty refuse vehicles' forever subject to the Regulation." This is not the case. The provisions of Mass. Gen. L. ch. 111, § 31A limit the scope of the Board's regulation to persons who have obtained a permit from or registered with the Board to "remove or transport garbage, offal or other offensive substances through the streets" of the Town. *City of Malden v. Flynn,* 318 Mass. 276 (1945) (power of board of health determined by reading § 31B in conjunction with § 31A). As a consequence, the Town's use of the term "empty refuse vehicles" is not vague and is readily enforceable. Empty refuse vehicles are vehicles owned or

operated by a person permitted or registered under Mass. Gen. L. ch. 111, § 31A which are empty at the particular moment that they use the streets.

Petitioner argues, at 13, that the Regulation is discriminatory in its application because refuse haulers cannot readily be identified, stating that "any vehicle with a commercial license can haul waste, though not every vehicle does." This is unfounded, because a simple means of identifying actual waste haulers from trucks that merely appear capable of transporting refuse is implicit in the Regulation. A driver of a vehicle capable of hauling waste is asked for identification in the form of a waste hauler's permit required under Mass. Gen. L. ch. 111, § 31A.

The Supreme Judicial Court has held that whatever rationally tends to the promotion and preservation of the public health is within the police power of the state. *Comm. v. Houtenbrink*, 235 Mass. 320 (1920). Moreover, the court has held that a "municipal corporation has the right to remove nuisances which may endanger the health of its citizens, and its decision as to the manner in which it shall be done is conclusive, unless it transcends the powers conferred by the charter or violates the constitution." *Baker v. City of Boston*, 29 Mass. 183, 193 (1831). The Town's regulation of empty trucks as well as filled trucks does not sharply conflict with the state statute's protection of residential neighborhoods from the nuisances of truck traffic.

It is clear that the Massachusetts Appeals Court acted properly in affirming the validity, under Massachusetts law, of the Town's Regulation. Petitioner attempts to present several questions to this Court as to the validity of the Regulation under Massachusetts law. Although Petitioner raises these questions, he has not even attempted to argue that they have federal implications. By definition, this topic does not raise *any*

questions of federal law, let alone an important question of federal law. Petitioner's effort to have this Court examine the Town's authority under state law to enact the Regulation should be rejected as this is an issue of pure state law.

It is a fundamental principle that the United States Supreme Court's review is limited to federal issues. "It is, of course, a familiar principle that this Court will decline to review state court judgments which rest on independent and adequate state grounds, even where these judgments also decide federal questions." *Henry v. State of Mississippi*, 379 U.S. 443, 446, 85 S. Ct. 564, 566 (1965). This long-standing principle applies here where Petitioner is attempting to have this Court review a decision of the Massachusetts Appeals Court on questions of substantive state law.

CONCLUSION

The Massachusetts Appeals Court correctly found that the Regulation does not violate the United States Constitution. Petitioner's other claims raise purely local issues and do not implicate any federal questions. Accordingly, the Petition seeking a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A — POLICE REPORT

DALTON POLICE DEPARTMENT

REPORT TO CHIEF

Originator: RENE' J. BONNEAU
Domestic Violence?: no
Subject: TRANSPORTATION OF GARBAGE

Report #: 2347
Date: 09/22/93

CHIEF FILIAULT:

(1) ON WEDNESDAY SEPTEMBER 22, 1993 AT 05:36 HRS., I OBSERVED A BERSHIRE CLEANWAY RUBBISH TRUCK (GARBAGE) ON A RESIDENTIAL STREET. (EXITING OFF OF PARK AVENUE). THE HAULER WAS STOPPED AT THE INTERSECTION OF MAIN STREET AND SOUTH STREET. THE DRIVER WAS I.D. ED TO BE ROBERT J. LAFFOND DATE OF BIRTH OF AUGUST 08, 1941, SOCIAL SECURITY NUMBER OF 003-288-945, LICENSE NUMBER OF MA. 033-288-945. REGISTRATION OF MA. COMM. 824135, WITH A TRAILER MA. REGISTRATION OF 68220. THE OWNER OF THE VEHICLE IS BERKSHIRE CLEANWAY RUBBISH REMOVAL INC. P.O.B. 253 DALTON MA. 01226. THE DESCRIPTION OF THE VEHICLE WAS BROWN IN COLOR CAB, WITH A GREEN BIN ON THE BACK TRAILER. THE VEHICLE WAS A DOUBLE TRAILER TYPE, WITH A GREEN BIN TO THE REAR OF THE FIRST GREEN BIN. THE VEHICLE PULLING BOTH BINS WERE FULL WITH WHAT THE DRIVER CALLED "DEMOLITION" (WOOD, PRESS BOARD, SHEETROCK ETC).

(2) THE DRIVER STATED THE FOLLOWING TO ME. THE COMPANY LAWYER WILL BE TAKING THE DALTON

OF DALTON TO COURT. THE LAWYER STATED TO THE DRIVER TO CONTINUE TO LEAVE FROM THE PARK AVENUE DEPOT STATION. THE DRIVER, MR. LAFFOND ALSO STATED HE WILL BE LEAVING AT 05.00 HRS., EVERY MORNING, WITH THE SAME TYPE OF TRUCK AND WITH THE SAME TWO BINS TO THE REAR. THE DRIVER STATED HE WAS GOING TO THE TOWN OF LEE. HE STATED THEY HAVE A CONTRACT WITH THE TOWN OF LEE TO PUT NON BURNABLE RUBBISH BECAUSE THEY ARE IN THE MIDDLE OF CAPPING THE TOWN LANDFILL. BUT BEFORE IT CAN BE CAPPED, THE LANDFILL HAS TO BE FILLED.

(3) THE DRIVER STATED AGAIN TO ME, WE WOULD BE SEEING THIS TRUCK ON RESIDENTIAL STREET UNTIL THEY RECEIVE DOCUMENTATION OF THE TOWN BY-LAW (CITATION OR FINE FROM THE BOARD OF HEALTH). WHERE IT WOULD BE TURNED OVER TO THE LAWYER WHO IS HANDLING THE CASE.

RESPECTFUL SUBMITTED;

RENE' J. BONNEAU
PATROLMAN DALTON POLICE DEPT.

Appendix A

DALTON POLICE DEPARTMENT

OFFENSE REPORT Case #: 93-09-1282

Offense Type: c

—Complainant—

Name-Last: TOWN OF DALTON First: Mid:
Street: 462 MAIN STREET]
City: Dalton State: MA Zip: 01226-
Phone:

—Report—

Received: Time: Date Rec.: 09/23/93

—Time and Place—

Offense Time: Date: 09/22/93 Place: PARK AVENUE
Domestic Violence: no

—Investigation—

Officer Assigned:
Investigation Time: Date:

Report By: CHIEF D. FILIAULT Date: 09/23/93

Appendix A

—Offense List—

—Suspect List—

Last: LAFFOND First: ROBERT Middle: J.
Street: 10 PARK TERRACE City: DALTON State: MA
Zip: 01226-
Date of Birth: 09/08/41 SSN: 003-28-8945

Offense Report Additional Text

1) On July 12, 1993 the Dalton Board of Health passed a regulation concerning the transportation of garbage in residential areas. The regulation went into effect August 1, 1993. All carriers of garbage licensed with the Town were notified of this regulation in writing by the Board of Health.

2) On August 4, 1993, Officer Rene' Bonneau stopped a vehicle owned by Berkshire Cleanway Inc. of Dalton. At the time (5:36am) the vehicle was being operated on a residential street (Park Ave.) in violation of the regulation (copy attached) which stated that such vehicles were only allowed in residential areas between 7:00am and 7:00pm.

3) At the time of the stop the vehicles container was empty, the operator Robert Laffond was asked if he was aware of the Board of Health regulation to which he stated he was. He further indicated that the company BCI had decided to violate the regulation so that the could contest the regulation in court. Mr. Laffond was sent on his way and he was informed that a report would be made to the Board of Health regarding the violation. A copy of that report is attached.

Appendix A

4) On September 22, 1993 at 5:36am, Officer Bonneau again stopped a BCI vehicle on Park Ave. in Dalton. This vehicle had a full load of garbage on it. The operator was again Robert Laffond who stated that he intended to continue to violate the regulation to force the Town to take further action against BCI.

5) On Thursday September 23, 1993 I spoke with Paul Carter a member of the Town of Daltons Board of Selectmen and Board of Health. He was informed of the second violation and he stated he would contact me on what action he felt the Town should take. He contacted me later in the morning and stated that the Board of Health wanted to take action on the violation of the regulation.

6) For that reason I would request that the operator of the vehicle be charged for violation of a Board of Health regulation set up under MCL Chapter 111 sec. 31A.

Respectfully submitted,

s/ Daniel D. Filiault
Chief Daniel D. Filiault

APPENDIX B — STATUTES INVOLVED

Mass. Gen. L. ch. 111, § 31

§ 31. Health Regulations; Notice.

Boards of health may make reasonable health regulations. A summary which shall describe the substance of any regulation made by a board of health under this chapter shall be published once in a newspaper of general circulation in the city or town, and such publication shall be notice to all persons. No regulation or amendment thereto which relates to the minimum requirements for subsurface disposal of sanitary sewage as provided by the state environmental code shall be adopted until such time as the board of health shall hold a public hearing thereon, notice of the time, place and subject matter of which, sufficient for identification, shall be given by publishing in a newspaper of general circulation in the city or town once in each or two successive weeks, the first publication to be not less than fourteen days prior to the date set for such hearing, or if there is no such newspaper in such city or town, then by posting notice in a conspicuous place in the city or town hall for a period of not less than fourteen days prior to the date set for such hearing. Prior to the adoption of any such regulation or amendment which exceeds the minimum requirements for subsurface disposal of sanitary sewage as provided by the state environmental code, a board of health shall state at said public hearing the local conditions which exist or reasons for exceeding such minimum requirements. Whoever, himself or by his servant or agent, or as the servant or agent of any other person or any firm or corporation, violates any reasonable health regulation, made under authority of this section, for which no penalty by way of fine or imprisonment, or both, is provided by law, shall be punished by a fine of not more than one thousand dollars.

Appendix B

Boards of health shall file with the department of environmental protection, attested copies of sanitary codes, and all rules, regulations and standards which have been adopted, and any amendments and additions thereto, for the maintenance of a central register pursuant to section eight of chapter twenty-one A.

Mass. Gen. L. ch. 111, § 31A

§ 31A. Permit for Removal and Transportation of Garbage.

No person shall remove or transport garbage, offal or other offensive substances through the streets of any city or town without first obtaining a permit from the board of health of such city or town; provided, however, that no rules or regulations shall restrict the hours of the day when garbage, offal or other offensive substances may be collected in areas zoned for business, commercial or industrial use. An application for such permit shall be in such form and contain such information, on oath, as such board shall require. All such permits shall expire at the end of the calendar year in which they are issued, but may be renewed annually on application as herein provided. No permit shall be transferred except with the approval of the said board.

Notwithstanding the foregoing provisions, any person may, without such a permit, transport garbage, offal or other offensive substances through the streets of a city or town in which said substances were not collected; provided, that he registers with the board of health of such city or town; and, provided further, that he transports said substances in accordance with such reasonable rules and regulations as may be established by such board of health. Motor vehicles owned by the commonwealth or any of its political subdivisions and motor vehicles engaged

under contract with the commonwealth in the transportation of garbage or refuse shall be exempt from the provisions of this section; provided, however, that a city or town may recommend to the department of highways, in writing, an alternative route of travel for such motor vehicles whereby the noise or nuisance incident to such travel shall be minimized or abated and said department shall consider such alterations or changes in the travel routes of such motor vehicles as will result in the minimization of such noise or nuisance.

Mass. Gen. L. ch. 111, § 31B

§ 31B. Rules and Regulations for Removal of Garbage.

Boards of health shall, from time to time, make rules and regulations for the control of the removal, transportation or disposal of garbage, offal or other offensive substances. Whoever violates any provision of section thirty-one A, or of any rule or regulation made thereunder, shall be punished by a fine of not more than one thousand dollars.